REMARKS

Claims 1-5 are pending in the application. Claims 1-5 stand rejected.

It is respectfully submitted the previous Office Action should not have been made final. The claims were amended in the previous response in order to clarify the invention with regard to the 112 rejection. Applicant's arguments relied on the serviceable bandwidth manager, which was not amended, to overcome the Rollings & Marchok rejections.

The Office Action stated the arguments were unpersuasive but moot in view of the new grounds for rejection. However if the arguments were not deemed to be persuasive then the rejection should have been maintained. No reasoning was given why the first rejection of Rollings & Marchok was withdrawn. Again if it was withdrawn simply to provide a new rejection then the Office Action should not have been final.

MPEP 706.07 provides "Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement."

In this case a new ground for rejection was introduced which was not necessitated by amendment.

Claims 1 has been amended to clarify the subject matter of the claimed invention. As seen from the amended claim 1, "an applied threshold value" is a threshold value of the premium bandwidth control service within the entire network. Support for this amendment can be found on page 12, line 2 to page 15 line 9. No new matter is entered.

Regarding rejection under 35 U.S.C. §112

4

Claims 1-5 are rejected under 35 U.S.C.§ 112, second paragraph, as being indefinite. It is argued in the Office Action that it is not clear why the serviceable bandwidth manager transmits the applied threshold value back to the network offerer.

The Examiner has noted that it is unclear why the serviceable bandwidth manager transmits the applied threshold value back to the network offerer. Although the Examiner asserts that the network offerer should know the applied threshold value since it has previously transmitted to the serviceable bandwidth manager comprising the network interface, the applicant believes that the network offerer need not necessarily know the applied threshold value at all times. Once the applied threshold value is transmitted to the serviceable bandwidth manager, the network offerer may forget the value. When the network offerer needs to know the applied threshold value, a collection demand is sent to the serviceable bandwidth manager which in turn transmits the applied threshold value in response.

It is respectfully submitted in view of the above mentioned clarification that the rejection should be withdrawn.

<u>Prior Art Rejections</u>

Claims 1, and 3-4 were rejected under 35 U.S.C. §103(a) as being unpatentable over Mckinnon, III et al, U.S. Patent No. 6,845,106 (hereinafter Mckinnon) in view of "Official Notice".

Claim 2 was rejected under 35 U.S.C. §103(a) as being unpatentable over Mckinnon in view of "Official Notice" as applied to claim 1, and further in view of Ebata et al, U.S. Patent No. 6,693,533 (hereinafter Ebata).

Claim 5 was rejected under 35 U.S.C. §103(a) as being unpatentable over Mckinnon in view of "Official Notice" as applied to claim 4, and further in view of Kirkby et al, U.S. Patent

5

No. 6,671,285 (hereinafter Kirkby).

The rejection of claims 1-5 is being herein respectively traversed for at least the following reasons:

Regarding independent claim 1:

According to col. 9, lines 41-48 of Mckinnon, the interface layers 96 and 98 respectively included in the Data Collector 88 and Bandwidth Allocator 92 enables communication with each CMTS and CMs of each Cable Network. However, the network access for each of the CMTS and the CMs is managed by the network access manager 86. This implies that the interface disclosed by Mckinnon is referred to by the carrier but not by the users of the network.

Mckinnon merely describes general features of an SLA on col.14, line 27-39 and fails to describe "a regular bandwidth control service of best effort type" on col.19, lines 6-24.

Thus, Mckinnon fails to disclose "a customer interface for accepting, from the customer, an available bandwidth of a premium bandwidth control service demand with a higher priority than a regular bandwidth control service of best effort type" as recited in claim 1 of the present invention.

According to col.9, lines 6-65 of Mckinnon, the Administrator 106, the Carrier, or the other entity defines a user as a "candidate" for modifying the SLA if the user's level of throughput, bandwidth consumption, and/or bandwidth requested for the predetermined time interval differs by a predetermined tolerance from a respective minimum threshold value. A user identified as a candidate will receive solicitation including an invitation for the user to modify the user's SLA by increasing for a fee the minimum level of network access guaranteed to the user and the acceptance of the invitation by the user results in the modification of the user's SLA.

Thus, a user's SLA is modified only when the user is defined as a "candidate" and the

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user accepts the invitation sent by the Administrator 106, the Carrier, or the other entity. It is understood that Mckinnon's system does not allow a user to request the modification by a demand ("premium bandwidth control service demand" of claim 1).

It is to be noted that although Mckinnon's system allows "dynamic SLAs" to users, which may appear to be similar to the present invention. It is completely different from the present invention in that the network manager (offerer) takes the initiative on the modification of the user's SLA.

Accordingly, Mckinnon fails to disclose "a serviceable bandwidth manager for comparing an available bandwidth of the premium bandwidth control service demand with the applied threshold value to determine whether or not the premium bandwidth control service is available, for notifying the result to the customer through the customer interface, and for demanding that the network should secure a bandwidth in order that the customer who has received the notification of a service permission can start the premium bandwidth control service when the premium bandwidth control service is determined to be available" as recited in claim 1 of the present invention.

As seen from the amended claim 1, "an applied threshold value" is a threshold value of the premium bandwidth control service within the entire network.

On the other hand Mckinnon's SLA is an agreement for each of the users.

Accordingly, Mckinnon fails to disclose that "the serviceable bandwidth manager transmitting to the network offerer the applied threshold value in response to a collection demand by the network offerer, and adopting a changed applied threshold value for the determination when the network offerer has changed the applied threshold value" as recited in claim 1 of the present invention.

7

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In the Office Action, as described in "Official Notice", that it would have been obvious to one having ordinary skill in the art at the time of the invention was made to include the applied threshold value in Mckinnon's system because by doing so it would improve the reliability thereof to avoid exceeding the system bandwidth threshold causing a system overload.

However, as described above, Mckinnon's system does not allow a user to request the modification by a demand. Therefore, there is no need for the system to compare the available bandwidth requested by a user by the premium bandwidth control service demand with the applied threshold.

Thus, one having ordinary skill in the art at the time of the invention would not be motivated to include the applied threshold value in Mckinnon's system.

Therefore, it is respectfully submitted independent claims 1 is patentable over Mckinnon in view of "Official Notice" under 35 U.S.C. §103(a).

With regard to claims 2-5 depending directly or indirectly from independent claim 1, while the applicant believes their patentability at least because of their direct or indirect dependency from the patentable independent claim 1, additional remarks for each claim will be presented as follows:

Regarding Dependent claim 2:

The timer disclosed by Ebata is to automatically stopping data transfer after a fixed period of time following the start of data transfer. Therefore, the timer disclosed by Ebata is used for releasing the premium bandwidth control service. Also, Ebata fails to show a function for controlling a timer of unfixed period of time.

Thus, Ebata fails to disclose " a timer manager which monitors an applied time of the premium bandwidth control service received by the customer through the customer interface, and

8

which demands a release of the premium bandwidth control service from the serviceable bandwidth manager, when the applied time has elapsed" as recited in claim 2 of the present invention.

Therefore, claim 2 depending from claim 1 is believed to be patentable over Mckinnon in view of "Official Notice", and further in view of Ebata under 35 U.S.C. §103(a).

Regarding Dependent claim 3:

As described above, Mckinnon's system does not allow a user to request the modification by a demand.

Thus, Mckinnon fails to disclose "a service reservation manager which reserves and manages a customer whose premium bandwidth control service demand is rejected by the serviceable bandwidth manager, and which notifies to the customer that the premium bandwidth control service becomes available at that time, based on the applied threshold value" as recited in claim 3 of the present invention.

Therefore, claim 3 depending from claim 1 is believed to be patentable over Mckinnon in view of "Official Notice" under 35 U.S.C. §103(a).

Regarding Dependent claim 4:

According to col. 14, line 64-col. 15, line 3, Mckinnon discloses that a fee specified in each user's SLA may be different as between users or different groups of users. However, Mckinnon fails to disclose that the fee is calculated based on an accounting rate set according to a remaining bandwidth of the premium bandwidth control service.

Thus, Mckinnon fails to disclose "an additional rate manager which manages an accounting rate set according to a remaining bandwidth of the premium bandwidth control service and forming an additional rate calculation standard, and which notifies the accounting

9

rate corresponding to the remaining bandwidth of the premium bandwidth control service at a

time when a service is demanded by the customer to the serviceable bandwidth manager, while

the premium bandwidth control service is offered" as recited in claim 4 of the present invention.

Therefore, claim 4 depending from claim 1 is believed to be patentable over Mckinnon in

view of "Official Notice" under 35 U.S.C. §103(a).

Regarding Dependent claim 5:

Kirkby discloses a price control cell communicated over an ATM network. However,

Kirkby fails to disclose a function for calculating a fee from a bandwidth requested by a user and

an accounting rate set by a manager.

Thus, Mckinnon fails to disclose that "when the customer releases the premium

bandwidth control service, the additional rate manager changes the accounting rate to a new

accounting rate considering the released bandwidth for accounting " as recited in claim 5 of the

present invention.

Therefore, claim 5 depending from claim 4 is believed to be patentable over Mckinnon in

view of "Official Notice", and further in view of Kirkby under 35 U.S.C. §103(a).

For at least the foregoing reasons it is respectfully requested the rejections be withdrawn.

This application is in condition for allowance which action is respectfully requested.

However, if the Examiner should consider this application not to be in condition for allowance,

the Examiner is invited to telephone the undersigned attorney at the number listed below prior to

issuing a further Action.

10

Any fee due with this paper may be charged to Deposit Account No. 50-1290.

Respectfully submitted,

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11